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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,488	09/16/2003	Joseph P. Errico	SPINE 3.0-437 P P P P P P P I C	2425
530 7590 03/04/2008 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				
EXAMINER PELLEGRINO, BRIAN E				
ART UNIT		PAPER NUMBER		
3738				
MAIL DATE		DELIVERY MODE		
03/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/663,488

Applicant(s)

ERRICO ET AL.

Examiner

Brian E. Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9, 11-13 and 15 is/are rejected.
- 7) ☒ Claim(s) 4 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3,5-9,11,12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brantigan (5192327) in view of Farris (5782830). Brantigan illustrates an orthopedic implant having at least two plates **11** mounted to one another including engagement holes **13** in a perimeter region of the bodies. Holes inherently have first and second ends and since the holes are on one side of the perimeter of the plates, they can be said to have an end facing the other perimeter face of the plates. Additionally, since they are located within the perimeter of the plates the other end is "disposed" within it. Fig. 13 shows that the plates can be manipulated with a tool having a post **73a** to insert into the engagement holes. However, Brantigan fails to disclose the post is within a shaft. Farris teaches (Figs. 7,9) an implantation tool **50** that has a shaft **160** that houses entirely a post **65** that extends out (Figs. 8,10) to have an end engage an implant. The shaft aids in the delivery of the implant, col. 10, lines 65,66. It would have been obvious to one of ordinary skill in the art to use the shaft as taught by Farris with the tool of Brantigan such that it gives a more controlled delivery by providing a guide. Regarding claim 2, Brantigan shows (Fig. 14) that the plate can have a plurality of holes **13a**. With respect to claim 3, the surgeon can do the procedure with any desirable approach and can be placed anteriorly or antero-lateral.

With respect to claims 7-9,11 Brantigan as modified by Farris fail to disclose three engagement holes in a plate. It would have been obvious to one of ordinary skill in the art to incorporate a third hole in the plate of Brantigan since it would provide more versatility in the ability to manipulate the implant. Such a modification only involves routine skill in the art and would yield predictable results. Regarding claims 8,9, the same capabilities would be possible for the surgeon to perform the desired surgical approach. Clearly a hole could be lined up along an anterolateral or anterior approach.

Claims 13,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brantigan (5192327) in view of Zucherman et al. (2001/20170). Brantigan is explained supra. However, Brantigan fails to disclose a tool having a shaft with a channel housing a spring and a post entirely in a first position. Zucherman et al. teach (Fig. 3b) a tool **100** having a shaft **150** that houses a post **40** in the first position and then subsequently extends when the user is inserting an implant. Zucherman also shows (Fig. 2) the tool has a spring **125** in contact with the post **40** to bias deployment of the implant. It would have been obvious to one of ordinary skill in the art to use a spring and shaft to receive a biased post as taught by Zucherman et al. with the implant of Brantigan such that it prevents the post from backing out of the hole of the implant inadvertently that could cause misalignment of the implant. Fig. 6 of Zucherman shows a flange mechanically connected to the rod. It would have been obvious to use a mechanically connected flange as taught by Zucherman with the implant and modified tool of Brantigan such that it provides the surgeon the ability to have a tensioned device to provide steady delivery.

Response to Arguments

Applicant's arguments with respect to claims 1,13 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 4,10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M- F (9-5:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TC 3700

/Brian E Pellegrino/
Primary Examiner, Art Unit 3738